IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.02.2007

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

S.A.No.488 of 1996

1.Thirumalaiswamy Naidu
2.Rajkumar
3.Selvan
4.Jaganathan ..... Appellants

-Vs-

1.S.Ramaswamy
2.S.Ramalingam ..... Respondents

The second appeal has been filed against the judgment and decree passed by the learned Subordinate Judge, Gobichettipalayam, made in A.S.No.69 of 1989, dated 20.03.1991, confirming the judgment and decree of the District Munsif, Sathyamangalam, made in O.S.NO.812 of 1987, dated 15.02.1989.

For Appellants : Mr.S.Swaminathan

For Respondents : Mr.K.Ramachandran

ORDER

The present second appeal has been filed against the judgment and decree passed by the learned Subordinate Judge, Gobichettipalayam, made in A.S.No.69 of 1989, dated 20.03.1991, confirming the judgment and decree of the District Munsif, Sathyamangalam, made in O.S.NO.812 of 1987, dated 15.02.1989.

2. The plaintiffs in the suit O.S.No.812 of 1987, are the respondents in the present second appeal. The plaintiffs had filed the suit praying for a decree for permanent injunction and for restraining the defendants 1 to 4 from obstructing or in any manner interfering with the plaintiffs' peaceful use and enjoyment of the suit cart-track 'A,B,C,D,E' passing through SF.284/3-C, SF.284/1-A, SF.285/1 and SF.286/1 with a width of 12 feet and for granting of such other reliefs.

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3. The plaintiffs had stated that they are brothers and the defendants 1 to 4 are father and sons who are co-owners of the Survey Fields in SF.284/3-C, SF.284/1-A, SF.285/1 and SF.286/1 in Chikkarasampalayam Village, Sathyamangalam Taluk. The defendants 5 and 6 are the owners of SF.284/3-C, SF.284/1-A. The plaintiffs had also submitted that they owned an extent of 6.50 acres in SF.287/3 and 57 cents in SF.286/1. They have entered into an agreement to purchase an extent of 1.11 1/2 acres in SF.285/1. The sale deeds and the agreement have been filed along with the plaint. It was also submitted by the plaintiffs that they have been reaching their lands through 'A,B,C,D,E', the cart-track which has been in existence for more than 30 years. The plaintiffs have been enjoying the use of the cart-track by easement of necessity.

4. It was further stated that 'A,B,C,D,E,' which was the plan marked, pathway have been converted into a cart-track with the consent of all the owners of the patta land including all the defendants. The plaintiffs have no other way to reach their lands except by using the suit cart-track, the width of which is more than 12 feet. Due to some misunderstanding, the defendants 1 to 4 have threatened to destroy the suit cart-track and that they would obstruct the plaintiffs peaceful enjoyment of the same. The defendants 5 and 6 were added as parties to the suit since the suit cart-track was also passing through their lands, even though they were not objecting to the plaintiffs possession and enjoyment of the cart-track.

5.In the written statement filed on behalf of the defendants, it has been stated that the plaintiffs had made false claims and frivolous allegations against the defendants and that the suit is not maintainable both in law and on facts. The defendants had further stated that the plaintiffs do not have any right or interest over the suit property as they did not have title over the same. There was no cart-track in existence on the property of the defendants as shown in the plaint plan. The claim of the plaintiffs that they were using the cart-track to reach the lands owned by them by way of easement of necessity is false and the claim made by the plaintiffs that the cart-track was in existence for more than 30 years is also false.

6. The defendants had also stated that there was a north-south cart-track which the plaintiffs had been using to reach their properties. Since the second plaintiff had attempted to trespass the lands of the defendants with his tractor and bullock carts, a complaint was lodged with the police, on 29.05.1986, by the first defendant and again on 21.05.1987. The police report was given by the first defendant against the plaintiffs who had attempted to trespass into the lands of the defendants. Since the

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plaintiffs were creating problems to the defendants, defendants 5 and 6 were forced to file a suit for permanent injunction against the plaintiffs in O.S.No.814 of 1987 which was still pending. The defendants had further contended that the suit was bad in law for non joinder of the owner of the properties in SF.285/1, namely, one Mr.Arumugam son of Kullapa Gounder who was a necessary party.

7. Based on the rival contentions of the plaintiffs and the defendants in the suit, the trial Court had framed the following issues:-

> "1. Whether the plaintiffs are entitled for the relief of permanent injunction relating to the cart track shown in the suit sketch?
> 2.Whether the suit is affected by the non joinder of the necessary parties in the suit?
> 3.What is the relief which the plaintiffs are entitled to?"

8. With regard to the Issue No.1, the trial Court had held that the main plea of the defendants was that the suit cart track/path-way marked A, B, C, D, E was laid by force by the plaintiffs prior to the filing of the suit and it was not correct for the plaintiffs to state that the pathway was in existence for more than 30 years and therefore, the plaintiffs cannot claim any easementary rights as such. It was also noted that the defendants 5 and 6 had filed a suit against the plaintiff praying for an order of permanent injunction restraining them from interfering in the use of the pathway in S.Nos.284/1 and 284/3 by laying a cart track. The said suit was taken on file as O.S.No.814 of 1987. However the said suit was dismissed for non-prosecution and no further action was taken by the plaintiffs in the said suit to restore the same. It was stated to be in favour of the plaintiffs in O.S.No.812 of 1987 showing that the 5th and 6th defendants did not have any objection to the enjoyment of the cart track by the plaintiffs.

9.The plaintiffs examined one witness on their behalf and marked three exhibits. Five witnesses were examined in total and 3 exhibits were marked on behalf of the defendants The Court exhibits were also marked as Exhibits 1 to 4.

10.The Trial Court after analysing the documentary as well as the oral evidence, had come to the conclusion that the disputed cart-track was in existence long before the dispute arose and it was also found that the plaintiffs had no other way to reach the properties except by using the suit cart-track through the lands belonging to the defendants. Therefore, the plaintiffs had easementry rights over the suit cart-track and consequently, they

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were entitled for the relief of permanent injunction as prayed for.

11. Aggrieved by the findings of the trial Court, the defendants in the suit had filed an appeal before the Sub- Court, Gobichettipalayam, in A.S.No.69 of 1989. The Sub- Court had framed the following the points for consideration:-

> "1.Whether the suit cart track was in existence on the date of filing of the suit?
>
> 2.Whether the plaintiffs are entitled for the relief of permanent injunction as sought for in the plaint?"

12. While answering the issues together, the first Appellate Court found that the land bearing Survey NO.287/3 belonging to the plaintiffs and S.No.286/1 on the eastern side of the same are in continuation to S.No.285/1 on the eastern side. The land belonging to the defendants are situated on the southern side of S.Nos.287/3 and 286/1. The land belonging to defendants 5 and 6 are situated on the eastern side of Survey No.285/1. It was found that the suit cart track shown in the plaint sketch was running through S.Nos.284/3-C, 284/1-A, 285/1 and 286/1. In view of Exhibits A1 to A3 filed by the plaintiffs, the first appellate Court had found that the cart track has been in existence for a long time and it has been conveyed through the said sale deeds.

13. From the Commissioner's report and the sketch filed along with the report, it was clearly seen that there was a cart track running through the lands of the defendants and the evidence of D.W.4 had also supported the fact that it was a path-way which was in existence and had been broadened. The first Appellate Court had also come to the conclusion that the suit pathway was in existence long before the suit had been filed and there was easementary right existing in favour of the plaintiffs in the suit and the respondents in the first appeal.

14. In such circumstances, the first Appellate Court had confirmed the judgment and decree of the trial Court granting the reliefs as prayed for by the plaintiffs.

15. Aggrieved by the judgment and decree of the lower appellate Court, dated 20.3.1991, made in A.S.No.69 of 1989, the present second appeal had been filed by the appellants.

16.The second appeal had been admitted on the following substantial questions of law:

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"(1) Whether the Courts below could permit the respondent to mark a document to be shown as an Exhibit that came into existence after the filing of the suit?

(2) Whether it is open to the Courts below to give a finding on an issue when there were conflicting claims among the parties, without summoning the public documents, viz., Adangal Extract, relating to the disputed area from the Revenue Authorities?

(3) Whether it is open to the Courts below to ignore the pith and substance of documents when the same had been marked as Exhibits in which there is no reference to the existence of a cart track at all?

(4) Whether the Courts below while drawing inference of facts, have not failed to draw the same in a legal manner i.e. in a manner neither unreasonable nor illogical, nor unwarranted by the facts from which it was drawn?"

17. It was contended by the learned counsel appearing on behalf of the appellants that the sale deeds marked by the plaintiffs as Exhibits A1 to A3 did not show the cart track in the description of the properties sold under the deeds. The learned counsel also contended that the claims made by the plaintiffs that the cart track had existed for nearly 30 years had not been proved, especially, in view of the fact, that the sale deeds were only 2 years old. Further, there was nothing to show the width of the pathway as being 12 feet or more and there was no negative covenant in the sale deed to prohibit the parties from disturbing the possession and enjoyment of the suit cart-track by the plaintiffs.

18. It was further contended that the Courts below should have considered the balance of convenience which was clearly in favour of the defendants in the suit and the appellants in the present second appeal. The plaintiffs in the suit and the respondents in the present appeal had no prescriptive or easementary right with regard to the possession and enjoyment of the suit cart -track.

19. The learned counsel appearing for the respondents submitted that the claims made by the plaintiffs are very clear and it had been clearly stated in the plaint that the suit cart-track has been in existence for nearly 30 years and the width of the cart-track was about 12 feet as mentioned in the scheduled of property. In support of the above contention, it was pointed out

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that D.W.4 had stated during the cross-examination that the cart-track was about 15 feet in width. It has also been clearly made out that there is no alternate pathway for the respondents to reach their properties except through the suit cart-track. Learned counsel for the respondents had pointed out that the sale deeds marked as Exs.A1 to A3, had clearly stated about the cart-track and that it has been in existence for a long time.

20. It is found that all the above mentioned substantial questions of law are relating to the aspect of appreciation of the available evidence by the Courts below. From the records available before this Court, it is seen that the Courts below have rightly analysed the evidence on record, both oral and documentary, and had come to the right conclusions. There is nothing shown on behalf of the appellants herein to persuade this Court to interfere in the findings of the Courts below. Unless the findings of the Courts below are perverse and wholly contrary to the evidence available, it would not be open this Court to interfere in such findings, as decided by the Supreme Court in GURDEV KAUR AND OTHERS Vs. KAKI AND OTHERS (2007 (1) CTC 334).

21. In such circumstances, it is found that both the Courts below had come to the right conclusion in allowing the reliefs prayed for by the plaintiffs and that there is no reason or cause to interfere in the findings of the courts below as there is nothing to suggest that they have not been supported by sufficient documentary and oral evidence.

22. For the reasons stated above, this court is of the considered view that the findings of the Courts below need not be interfered with in the present second appeal. Therefore, the second appeal stands dismissed. No costs.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Subordinate Judge,
Gobichettipalayam.

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2.The District Munsif,
Sathyamangalam

3. The Section Officer,
VR Section, High Court,
Madras.

+ 1 cc to Mr. K. Ramachandran, Advocate CCSR No. 11325

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